



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1994

Mr. Don J. Rorschach
City Attorney
City of Irving
P. O. Box 152288
Irving, Texas 75015-2288

OR94-302

Dear Mr. Rorschach:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a). Your request was assigned ID# 23501.

The information at issue is the contents of at least 1,000 forms of "Application for Disabled Person Parking Identification Card." Each of these applications identifies the applicant as a person claiming to "hav[e] a physical or mental impairment necessitating vehicle parking that is near the entrance of a building" under section 21-1 of the City Code of Irving, Texas, and includes a certification from a licensed physician that the applicant has such an impairment. You have sent us several representative samples of the application.

You claim that all of the information in the applications is excepted from public disclosure by section 552.101 of the Government Code and the Texas Medical Practice Act, V.T.C.S. art. 4495b. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.08(b) of the Texas Medical Practice Act provides as follows:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician *that are created or maintained by a physician* are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b) (emphasis added). Therefore, all information on an application that is "created . . . by a physician," specifically, the portion of the form, or any attachment thereto, that is *completed by a physician* and that identifies the patient or

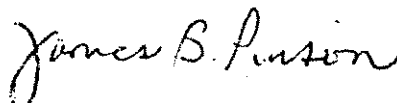
records a "diagnosis, evaluation, or treatment of a patient" is confidential under article 4495b. Information on an application that is not completed by a physician is not made confidential by the Texas Medical Practice Act.

You also contend that any information in the form identifying the applicant as a disabled person is confidential under section 552.101 in conjunction with the common-law right of privacy. We disagree. A person has a common-law right of privacy in information about that person containing highly intimate or embarrassing facts whose disclosure would be highly objectionable to a person of ordinary sensibilities, unless those facts are of legitimate public concern. *E.g., Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 684-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The mere fact that a person has applied for a disabled person parking identification card is not intimate or embarrassing. *Cf. id.* at 686 ("there is nothing intimate or embarrassing about the fact, in and of itself, that an individual has filed a claim for [workers' compensation] benefits"); Open Records Decision No. 475 (1987) at 2 ("No intimate or embarrassing information about an individual is revealed when he is identified as an applicant for [a special transit service available to persons with disabilities]"). The identities of the applicants are not protected by common-law privacy.

We have marked the documents that you must withhold pursuant to article 4495b. We have not found any of the remaining information to be confidential under the common-law right of privacy.

Because case law and prior published open records decisions resolve your request, we are concluding this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Open Government Section

JBP/LRD/rho

Ref.: ID# 23501

Enclosures: Open Records Decision No. 475
Marked documents

cc: Mr. Matthew M. Lakota
820 South MacArthur Boulevard, #105-300
Coppell, Texas 75019
(w/o enclosures)